



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 31, 1994

Ms. Tracy R. Briggs
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR94-535

Dear Ms. Briggs:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 27526.

The City of Houston (the "city"), through its police department, received a request for certain police department policy manuals. Specifically, the requestor seeks "any available information" regarding "the Houston Police Department's procedure for internal investigations regarding patrol officers suspected of wrongdoing" and "a copy of the Houston Police Department's policies and procedures manual for patrol officers." You have submitted the requested information to us for review and claim that sections 552.103 and 552.108 of the Government Code except it from required public disclosure.

Section 552.103(a) of the Government Code excepts from required public disclosure information

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

For information to be excepted from public disclosure by section 552.103(a), litigation must be pending or reasonably anticipated and the information must relate to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); *see also* Open Records Decision No. 551 (1990) at 5. Although section 552.103(a) gives the attorney for a governmental body discretion to determine whether section 552.103(a) should be claimed, that determination is subject to review by the attorney general. Open Records Decision Nos. 551 at 5; 511 (1988) at 3.

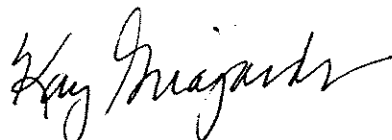
You advise us that the requestor represents the plaintiff in a pending civil action in which the city is a defendant, namely, *Angela N. Hamilton v. City of Houston and Mellon Mortgage Company*, Cause No. 94-020549, filed in the 234th Judicial District, Harris County, Texas. The plaintiff seeks damages under the Texas Tort Claims Act, Civ. Prac. & Rem. Code § 101.001, for damages allegedly caused by the city's negligence in an incident in which a city police officer sexually assaulted the plaintiff. The Assistant City Attorney handling the pending litigation contends that the requested document, titled "Standard Operating Procedures for Field Operations," relates to this litigation for two reasons. First, the plaintiff claims that the damages result from personal injury proximately caused by negligence of the city and the negligence of a city employee acting within the scope of employment. Second, the Assistant City Attorney argues that the document relates to the duties of a police officer. In addition, the Assistant City Attorney claims that the requested document titled "Internal Affairs Division's Standard Operating Procedures" relates to the city's defense in the lawsuit, in that it concerns the city's action concerning the police officer.

We agree that the requested information relates to the pending litigation. Accordingly, we conclude that the city may withhold the requested information under section 552.103(a) of the Government Code.¹ As we resolve this matter under section 552.103(a), we need not address the applicability of section 552.108 at this time.

¹In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Government Section

KHG/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 27526

cc: Ms. Catherine M. Clayton
Legal Assistant
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(w/o enclosures)